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IN THE
COURT OF APPEALS OF INDIANA

CHARLES C. DARR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A05-0607-CR-653
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE CIRCUIT COURT
The Honorable David A. Kolger, Judge
Cause No. 89C01-0608-FD-105

August 24, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Charles C. Darr (Darr), appeals his conviction for possession of cocaine, a Class D felony, Ind. Code § 35-48-4-6(a).

We affirm.

ISSUE

Darr raises one issue on appeal, which we restate as follows: Whether the trial court properly sentenced Darr in light of the nature of his offense and his character.

FACTS AND PROCEDURAL HISTORY

At approximately 7:00 p.m. on July 26, 2006, the Wayne County Dispatch received a call that Damien Rowe (Rowe) was seen in a silver Crown Victoria with a handgun. Roughly three hours later, Officers Kelly Owens (Officer Owens) and Michael Wright (Officer Wright) (collectively, the Officers) located Rowe and the vehicle at a gas station.

The Officers pulled up next to Rowe's car in the parking lot. Three persons were seen inside the vehicle: Rowe, the driver; a man later identified as Darr in the passenger seat; and a third man in the backseat. As Officer Owens approached the passenger's side of the vehicle, he observed Darr look over his shoulder, open the glove box, throw something in the glove box, close the glove box, and place his hands in his lap. Upon reaching the vehicle, Officer Owens ordered Darr out of the car. He performed a "pat-down" search for weapons. Finding nothing on Darr's person, Officer Owens advised the other officers he was going to search the vehicle for weapons.

Officer Owens opened the glove box and found two knotted plastic baggies, one that appeared to contain, and was later identified as, crack cocaine, and one that appeared to contain, and was later identified as, powder cocaine. Officer Owens also found what was later determined to be marijuana inside a cup holder. Rowe admitted the drugs in the cup holder were his, but denied possessing the drugs found in the glove box. Rather, Rowe stated that he saw Darr with the baggies of cocaine earlier in the evening.

On August 1, 2006, the State filed an Information charging Darr with Count I, possession of cocaine, a Class D felony, I.C. § 35-48-4-6(a); and Count II, possession of marijuana, a Class A misdemeanor, I.C. § 35-48-4-11(1). On October 2, 2006, the State filed a Motion to Dismiss Count II, which was granted by the trial court. On October 4 and 5, 2006, a jury trial was held. The jury found Darr guilty of Count I, possession of cocaine. At a November 2, 2006, sentencing hearing, the trial court sentenced Darr to three years, finding his history of criminal and delinquent behavior consisting of forty-two juvenile arrests with four adjudications for offenses that would have been felonies if committed by an adult, one adult felony conviction, and the fact that he violated probation a mere twenty-four days after being released as aggravating factors. The trial court afforded minimal weight to the fact that Darr has a dependent child as a mitigating factor partly because he has been out of prison for a total of fifty-one days of his child's life. The trial court found the aggravating factors outweighed the one mitigating factor in imposing Darr's sentence.

Darr now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Darr contends that the trial court improperly sentenced him to the maximum sentence available and that his sentence is inappropriate in light of the nature of the offense and his character. Specifically, Darr believes that the trial court did not afford enough weight to the fact that (1) he was only nineteen years old, (2) had a dependent child, (3) had only one adult felony conviction, and (4) there were no victims involved in the crime when imposing a three-year sentence. Thus, Darr claims his sentence is excessive and that it should be revised.

"[S]o long as a sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, --- N.E.2d ---, 2007 WL 1816813, 6 (Ind. June 26, 2007). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). However, "[i]n order to carry out our function of reviewing the trial court's exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course[,] such facts must have support in the record." *Anglemyer*, 2007 WL 1816813 at 6 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). Where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence under Indiana Appellate Rule 7(B), which provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's

decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." *Anglemyer*, 2007 WL 1816813 at 7.

With respect to Darr's character, we find the three-year sentence imposed by the trial court appropriate. Darr was nineteen years old when he committed the instant offense, his second felony conviction as an adult. Prior to turning eighteen, Darr's involvement with the criminal justice system began at the tender age of eight. In ten years he amassed some forty-two arrests, four of which resulted in adjudications for offenses that would have been felonies if committed by an adult. Furthermore, Darr committed this offense while on probation.

Additionally, Darr claims he has a dependent child and being imprisoned would create hardship. However, our review of the record indicates Darr has been incarcerated for all but fifty-one days of his child's life and during those fifty-one days he worked for only half that time. Accordingly, we are not persuaded that the three-year sentence imposed by the trial court is inappropriate.

With respect to the nature of the instant offense, Darr argues he is not among the worst of the worst offenders because of the insignificant amount of cocaine he possessed. However, while the amount may have been small in comparison to other arrests for possession of cocaine, we remind Darr that there are statutory ramifications for possessing larger amounts of cocaine. *See* I.C. § 35-48-4-6. Additionally, Darr argues he committed "a victimless crime." (Appellant's Br. p. 6). It is hard to say there is ever a victimless crime simply because, as Darr puts it, he "did not rape, rob, molest, terrorize, murder, or deal drugs to someone." (Appellant's Br. p. 6). Clearly, in this case, Darr and

everyone who depends on him are victims of this crime. That he does not recognize he and his loved ones as victims makes this crime that much more egregious. As such, we find the three-year sentence imposed by the trial court appropriate with respect to the nature of this offense in conjunction with his character.

CONCLUSION

Based on the foregoing, we find the three-year sentence imposed by the trial court is not inappropriate.

Affirmed.

NAJAM, J., and BARNES, J., concur.